

DAVID R. FARABEE (Bar No. 130941)  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
50 Fremont Street  
San Francisco, CA 94105  
Telephone: (415) 983-1000  
Fax: (415) 983-1200  
E-mail: david.farabee@pillsburylaw.com

DAVID T. KRASKA (Bar No. 161878)  
Law Department  
Pacific Gas and Electric Company  
Post Office Box 7442  
San Francisco, CA 94120  
Telephone: (415) 973-7503  
Fax: (415) 973-5952  
E-mail: DTK5@pge.com

Attorneys for Defendant  
PACIFIC GAS AND ELECTRIC COMPANY

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

and

COMMUNITIES FOR A BETTER  
ENVIRONMENT,

Intervenor-Plaintiff,

vs.

PACIFIC GAS AND ELECTRIC  
COMPANY,

Defendant.

Case No. C-09-4503 SI

**JOINT STIPULATION BETWEEN  
UNITED STATES AND PACIFIC  
GAS AND ELECTRIC CO. FOR  
LEAVE TO FILE DOCUMENTS  
UNDER SEAL AND [PROPOSED]  
ORDER**

1 Pursuant to the Court's Standing Order pertaining to sealed documents and Civil  
2 L.R. 7-12, the United States and Pacific Gas and Electric Company ("PG&E") hereby file  
3 this Joint Stipulation for Leave to File Documents Under Seal and [Proposed] Order.

4 Intervenor-Plaintiff Communities for a Better Environment ("CBE") has served its  
5 First Set of Requests for Documents to PG&E, to which responses are due by May 14,  
6 2010. Document Request No. 22 requests the following:

7 DOCUMENTS reflecting the cost of OpFlex Turndown and Startup products  
8 referred to in paragraph 14 of the PROPOSED CONSENT DECREE and the costs  
9 of the installation, operation, and maintenance of such products at GATEWAY,  
10 including costs expected to be incurred for any consultants needed for the  
11 installation, operation, and maintenance of such products.

12 PG&E has in its possession certain invoices from the seller of the OpFlex Turndown  
13 and Startup Products that are responsive to Request No. 22 ("Invoices"). PG&E wishes to  
14 produce the Invoices to CBE. The United States has also requested to review the Invoices  
15 and PG&E wishes to provide the Invoices to the United States. However, the seller of the  
16 OpFlex Turndown and Startup Products deems the Invoices confidential. In an effort to  
17 allow the parties to receive copies of the Invoices while also addressing the seller's  
18 concerns about confidentiality, PG&E proposed that the parties enter into a Joint  
19 Stipulation to file the Invoices under seal with copies provided to counsel of record for their  
20 use in the course of the instant litigation. The United States has agreed to this procedure.  
21 CBE has not agreed.

22 PG&E believes it is important for the Court and parties to know the costs PG&E has  
23 incurred to date in complying with the proposed Consent Decree, even prior to entry, given  
24 that CBE objects to the proposed Consent Decree in part on the grounds that the  
25 settlement, in CBE's view, does not capture the economic benefit PG&E supposedly  
26 derived from its alleged non-compliance. *See* Reply Memorandum of Points and  
27 Authorities in Support of CBE's Motion for Permissive Joinder of Bay Area Air Quality

1 Management District and Jack Broadbent, pp. 3-4. The Court and the parties should have  
 2 this information regarding the substantial costs incurred by PG&E in installing the  
 3 OPFLEX products, for their evaluation of the proposed Consent Decree. However, PG&E  
 4 is also cognizant of the high importance that the vendor places on maintaining the  
 5 confidentiality of its pricing information.

6 Consequently, the United States and PG&E stipulate as follows:

- 7 1. PG&E shall file the Invoices under seal;
- 8 2. Within three (3) days of the court entering the attached [Proposed] Order,  
 9 PG&E shall produce the Invoices to counsel of record for the United States;
- 10 3 Should counsel for CBE wish to receive copies of the Invoices subject to the  
 11 conditions of the attached [Proposed] Order, PG&E shall produce the Invoices to counsel of  
 12 record for CBE within three (3) days of the court entering an Order modifying the attached  
 13 [Proposed] Order to encompass counsel of record for CBE.

14  
 15 IT IS SO STIPULATED.

16 I, David R. Farabee, attest that concurrence in the filing of this joint stipulation has been  
 17 obtained from Bradley R. O'Brien, an attorney for Plaintiff United States of America.

18  
 19 FOR PACIFIC GAS and ELECTRIC COMPANY

20 Date May 7, 2010

/s/ David R. Farabee  
 DAVID R. FARABEE  
 Pillsbury Winthrop Shaw Pittman LLP

21  
 22  
 23 FOR THE UNITED STATES OF AMERICA

24 Date May 7, 2010

/s/ Bradley R. O'Brien  
 W. BENJAMIN FISHEROW  
 ANGELA MO  
 BRADLEY R. O'BRIEN  
 United States Department of Justice

**[PROPOSED] ORDER**

GOOD CAUSE APPEARING,

1. Pacific Gas and Electric Company ("PG&E") is permitted to file under seal documents responsive to Request No. 22 as set forth in Communities for a Better Environment's First Set of Requests for Documents to PG&E (hereinafter "Protected Documents").

2. Within three (3) days of the entry of this Order, PG&E shall provide copies of the Protected Documents to counsel of record for the United States in this action.

3. In addition to counsel of record for the United States, Protected Documents and any information contained therein may be disclosed only to the following persons:

A. Employees of such counsel (excluding experts and investigators) assigned to and necessary to assist such counsel in the preparation and trial of this action; and

B. The Court.  
Protected Documents and any information contained therein shall be used solely for the prosecution of this litigation.

4. The United States shall not under any circumstances sell, offer for sale, advertise, or publicize Protected Documents or any information contained therein.

5. After termination of this litigation, the provisions of this Order shall continue to be binding, except with respect to those documents and information that become a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Protected Documents for enforcement of the provisions of this Order following termination of this litigation.

6. Upon termination of this action by dismissal, judgment, or settlement, counsel for the United States shall return the Protected Documents to counsel for PG&E.

1 Counsel for the United States may retain their attorney work product that refers or relates to  
 2 any Protected Documents. Attorney work product may be used in subsequent litigation  
 3 provided that such use does not disclose Protected Documents or any information contained  
 4 therein.

5 7. This Order shall be binding upon the United States and PG&E, and their  
 6 attorneys, successors, executors, personal representatives, administrators, heirs, legal  
 7 representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors,  
 8 or other persons or organizations over which they have control.

9  
 10 PURSUANT TO STIPULATION IT IS SO ORDERED. without prejudice to reconsideration at  
 11 a later date.

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13 \_\_\_\_\_  
 14 Date

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 16 SUSAN ILLSTON  
 17 UNITED STATES DISTRICT JUDGE

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